

Meeting of 2009-11-17 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
NOVEMBER 17, 2009 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr. Also Present:
Presiding Larry Mitchell, City Manager
 Frank Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Ray Lacey, Fort Sill Liaison

Mayor Purcell called the meeting to order at 6:34 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Don Howard, Holy Cross Lutheran Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
James Hanna, Ward Two
Janice Drewry, Ward Three
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
 Doug Wells, Ward Eight

ABSENT: None.

PRESENTATION OF PROCLAMATION FOR NOVEMBER 2009 AS HOSPICE MONTH.

Mayor Purcell proclaimed November 2009 as Hospice month in the Lawton Fort Sill community. He presented the proclamation to members of Hospice of Southwest Oklahoma.

PRESENTATION OF PROCLAMATION FOR TOBACCO-FREE LAWTON WEEK.

Mayor Purcell presented a proclamation to Students Working Against Tobacco (SWAT) proclaiming November 14 21, 2009 as Tobacco Free Lawton Week.

Members of SWAT stated it is their goal to establish tobacco free parks in Lawton and they will return to a future meeting to discuss this issue with the City Council.

AUDIENCE PARTICIPATION:

Blake Dutcher, P.O. Box 29, stated he represents Scissortail Development Company. He stated they received a notification based on the City Council action on September 21st to close and prevent Scissortail Development from using an access road as a construction entrance into the development. He stated access had used previously through roads within Skyline East addition, about 510 feet down Euclid and then a right turn 70 feet on 28th Street to the access road. He stated in the summer there were citizen complaints about heavy trucks and equipment using those roads. He stated three weeks before the Council took this action he and his client, Warren Waggoner, met with the Assistant City Manager Bryan Long and representatives from the City Attorney's office, Planning Commission, street department and the police department. They reached a comprehensive agreement on those same issues that were presented to the Council. He stated that Mr. Long opened the meeting by saying that he had the authority delegated by the Council to be able to propose an alternate truck route that would allow them to use that route if they reached agreements on certain issues. They identified two issues of concern which were the safety and the convenience of the citizens and the potential damage to the streets. Agreements were reached on each of those issues. They agreed to restrict the hours of use on the street and they agreed to do spot repairs to any damage within thirty days of notification and restrict what type of trucks can use the street. They promised that at the end of the construction phase, approximately three years, they would go in and completely resurface the affected areas of those streets.

Mayor Purcell stated that audience participation is basically limited to three minutes. He stated they need to bring

this back as an agenda item so they can have a full discussion on this issue.

Mr. Dutcher stated they have put a deadline on them to shut down that access effective the day before yesterday. He requested they extend that deadline until such time they can meet back and discuss this in full session. They will abide by their agreement.

Mayor Purcell stated this item will be brought back on December 1st.

Wells stated he has a problem with this issue even coming back up. This would not have happened if they would not have built a structure without a permit that kept their trucks from being able to go in the entrance.

Mayor Purcell stated he does not think they can take any action to extend the time, the best they can do is to bring it back on December 1st and if the Council wishes to take action they can discuss it then.

Haywood questioned if Councilmember Burk was involved in the meeting.

Mr. Dutcher stated Councilmember Burk was not in attendance, but he did meet on several occasions with Mr. Waggoner and did accompany him to the site.

Burk questioned what they were going to do between now and the December 1st meeting. He stated he was upset with the project, but they need to come up with an idea of what they are going to do to let Mr. Waggoner know if he can go back to work.

Wells stated he thought they agreed that Mr. Waggoner was going to have to build a bypass around that building.

Burk stated that is what he understood and he thought that November 15th was the deadline to have that done. Mr. Waggoner told him that he was going to build that road.

Warren Waggoner, developer of the project, stated it has always been his intent to build the bypass which is a safety issue because of fire trucks, etc. He stated until the issue is resolved he will bring all construction equipment through the main entrance. They intend to chain off the secondary entrance until this is addressed.

Wells questioned if the project will be able to move forward.

Mr. Waggoner stated yes.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETINGS OF OCTOBER 13 AND 27, 2009.

MOVED by Drewry, SECOND by Hanna, to approve the minutes of Lawton City Council for October 13 and October 27, 2009. AYE: Wells, Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Mayor Purcell requested items #2, #14 and #19 be considered separately. Drewry requested item #8, Shanklin requested item #10 and Wells requested items #7, #15 and #17 be considered separately.

MOVED by Shoemate, SECOND by Hanna, to approve the Consent Agenda with the exception of items #2, #7, #8, #10, #14, #15, #17 and #19. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which is over \$400.00: Joseph Johnson in the amount of \$6,000.00 (**Res. 09-115**), Jennifer and Chance Cargill in the amount of \$970.61 (**Res. 09-116**), Kathryn Glover in the amount of \$1,600.00 (**Res. 09-117**) and Homer and Adelheid Williams in the amount of \$1,508.55 (**Res. 09-118**). Exhibits: Legal Opinion/Recommendation, Resolution No.____, Resolution No.____, Resolution No.____, Resolution No.____.

2. Consider the following damage claims recommended for denial: Hazel Winn in the amount of \$238.04, Fred Cheek in the amount of \$1,241.98 and Margie and Stewart Johnson in the amount of \$5,291.88. Exhibits: Legal Opinions/Recommendations.

Mayor Purcell stated Mrs. Johnson requested to speak regarding her claim.

Margi Johnson, 7808 NW Morrocco Road, stated the city sewer backed up during the night. She called the City

and a plumber who came out the next afternoon. She stated she disagrees with the recommendation to deny her claim.

Kelea Fisher, Assistant City Attorney, stated staff did review the claim and it appears the back up occurred in October 2008, and a city crew did go out and clear the main and there were no obstructions found at that time. She stated that state laws states that if the City had no notice of a defect in the main, then the City cannot be found negligent for any back up. She stated Pippin Brothers Plumbing went out and found that all of the lines were clear and this was noted on their invoice. She noted the sewer segments above and below Mrs. Johnson s segments were replaced in September 2008.

Mrs. Johnson stated her neighbor also had the back up but did not go out of his bath tub.

Fisher stated the day after the back up occurred, sewer rehab crews did a post construction inspection and ran a camera through the line and there was no obstruction found at this time.

Shanklin questioned if Mrs. Johnson s homeowner insurance has paid anything on this claim.

Mr. Johnson, son of the claimant, stated they have received \$2,500 from insurance.

Burk questioned why it took so long to file the claim.

Mr. Johnson stated this was his fault. The claim form has been sitting on his desk.

Shanklin questioned the amount of the actual loss.

Mr. Johnson stated they spent \$5,291 and they have gotten \$2,500 reimbursed.

Ms. Fisher stated if the Council was to approve the claim, she requested that staff be allowed to deal with some issues on the list of property. They need to cross reference some of the information they have received.

Burk questioned if there was anything from the neighbor showing they had a back up at the same time.

Mrs. Johnson stated it did not happen at the same time, but it has happened.

Shanklin stated they have paid a lot of claims that were not as flagrant as this one. He feels they need to bring this back once they have established the final damages and he will make a motion that they pay it.

MOVED by Shanklin, SECOND by Burk, to table the claim of Margie and Stewart Johnson in the amount of \$5,291.88. AYE: Zarle, Haywood, Wells, Shoemate, Drewry, Burk, Shanklin. NAY: None. ABSENT: Hanna. MOTION CARRIED.

Wells stated with regards to the Cheek claim, he questioned why the city inspectors approved the building if the air conditioner was on the easement instead of the roof as indicated in the plans.

Jensen stated they should have obtained a revocable permit for an encroachment like this. When the inspector went out the easement was not marked. The bottom line is that there is still a requirement, even today, to get a revocable permit. Because of the way they constructed it, how are we negligent?

Wells stated if they did not know it was in the wrong place, they wouldn t have know to ask for a revocable permit. His question is why an inspector did not catch this.

Jensen stated the city inspector did not realize the easement was that close.

MOVED by Wells, SECOND by Shoemate, to deny the claims of Hazel Winn in the amount of \$238.04 and Fred Cheek in the amount of \$1,241.98. AYE: Wells, Shoemate, Drewry, Burk, Shanklin, Zarle. NAY: None. ABSTAIN: Haywood. ABSENT: Hanna. MOTION CARRIED.

3. Consider adopting a resolution approving the settlement by a joint petition and making payment in the pending workers' compensation claim of Jason Roberts. Exhibits: **Resolution 09-119**.

4. Consider and take action with respect to a resolution approving action taken by the Lawton Water Authority authorizing issuance, sale and delivery of the Authority's Drinking Water SRF promissory note to the Oklahoma Water Resources Board; ratifying and confirming a certain lease agreement, as amended; and containing other provisions related thereto. Exhibit: **Resolution 09- 120**.

5. Consider and take action with respect to a resolution approving action taken by the Lawton Water Authority authorizing issuance, sale and delivery of the Authority's Clean Water SRF promissory note to the Oklahoma Water

Resources Board; ratifying and confirming a certain lease agreement, as amended; and containing other provisions related thereto. **Exhibits: Resolution 09-121.**

6. Consider and take action with respect to a resolution approving indebtedness (the "note" or "notes") of the Lawton Water Authority in the amount of not to exceed \$28,000,000 in aggregate amount outstanding at any one time for the purpose of financing the BRAC related improvements to be financed with the proceeds of the 3/8th cent sales tax approved by the voters on October 9, 2007; waiving competitive bidding; approving documents including an agreement of support with the Authority; and other matters relating thereto. Exhibits: **Resolution 09-122.**

7. Consider approving a public safety improvement cost sharing application for Pinhigh Investments for the LPS new student enrollment center at 608 NW Ft. Sill Boulevard for the installation expense of a fire hydrant in accordance with Council Policy 6-4. Exhibits: Application is on file in the License & Permits office.

Wells stated he does not understand what the policy states or why we are doing this.

Richard Rogalski, Planning Director, stated LPS wants to change the use of the building and upgrade the building. In this case the location of the fire hydrant was a little short and there was not one on the proper side of Ferris Avenue, so the Fire Marshall requested an additional fire hydrant. In that situation, if the hydrant is going to be located in such a way that it actually serves several buildings, and there is a 50% rule, then they go to the cost sharing policy. He stated this has happened about two or three times.

Shanklin questioned how this will be split up.

Rogalski stated the applicant will submit a listing of materials and the Public Works Director will review the list and the City will actually provide the materials and the applicant will install it.

Burk stated this will be good for the other people in the area.

MOVED by Wells, SECOND by Burk, to approve a public safety improvement cost sharing application for Pinhigh Investments. AYE: Wells, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. ABSENT: Shoemate. MOTION CARRIED.

8. Consider approving a credit adjustment in the amount of \$874.45 to William Herring's service account #00006444 for the property at 102 NE 20th Street for an undetected, underground leak on the customer's water service line. Exhibits: Billing statement from Ken's Plumbing dated 9/17/2009 and Copy of Mr. Herring's service bill.

Drewry stated that Mr. Herring was in attendance and would like to speak on this issue.

Mr. Herring stated his bill was for \$1,272.48.

Mayor Purcell stated they will never adjust for the total bill.

Mr. Herring stated a construction company was renting the property and they got a water meter and used the fire plug and burst his water line. He stated they have moved their meter to a different fire plug so it will not happen again.

Barbara Curren, Revenue Services Supervisor, stated they adjusted the one bill for the 209,000 gallons back to an average of 14,000 gallons. The bill for 14,000 would have been \$196.23 and the original bill was \$1,070 and the difference is the \$874.45.

Wells questioned the \$292 bill.

Curran stated the only request from Mr. Herring was to adjust the bill for 209,000 gallons.

Burk questioned if this was the case.

Mr. Herring stated he would be satisfied with this adjustment.

MOVED by Burk, SECOND by Drewry, to approve credit adjustment in the amount of \$874.45 to William Herring's service account #00006444 for the property at 102 NE 20th Street. AYE: Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

9. Consider approving a credit adjustment in the amount of \$590.42 to Lighthouse Church of God's service

account #00023319 for the property at 926 NW Rogers Lane for an undetected, underground leak in the service line. Exhibits: Invoice from Gordon Plumbing dated 5/13/09 and Copy of customer's May service bill.

10. Consider approving a credit adjustment in the amount of \$618.39 to Donna Littlefield's service account #00026227 for the property at 1605 W. Gore Boulevard for an undetected, underground leak in the service line between the meter and the house. Exhibits: Plumbing Invoice from Hodges Plumbing dated 7/30/09.

Shanklin stated he has had property that has had an underground leak at the City came out and turned his water off so he did not lose any more water. He stated we are letting some of these accounts go for two or three months. The burden is on us to let these people know they have a leak.

Curren stated they try to catch these as they can. They cannot look at every single account.

Shanklin stated two months is too long. They need to be able to recognize the problem and notify these people.

Rick Endicott, Finance Director, stated staff tries to notify those they are aware of. He stated over the past year there have not been more than twenty five adjustments over \$500. Out of 30,000 accounts they have probably notified twice that many.

Shanklin stated there are computers everywhere and he would assume this would be part of the program.

Endicott stated they would have to have one person dedicated to looking at nothing but overages of a certain amount. It is a labor intensive task even with computers.

Wells stated IT could write a small program to go in and set an hourly reading file and if they see an account that has water usage every hour in a 24 hour period they obviously have a leak.

Endicott stated they already have that in place, but someone would have to sit there and look through that list determining which ones are legitimate leaks and which ones are using water.

Burk questioned if it would red flag anyone over a certain amount.

Endicott stated we have the ability to identify if it is using a certain amount over the average.

Burk questioned the process once it pinpoints usage over a certain amount. Do they call the customer?

Endicott stated if someone catches it the next morning they do notify that customer. They notify them when they can, but not all people get notified on every one that may be 2 times their average.

Burk questioned if they needed someone to watch this. Is there a great need for this?

Endicott stated if the City Council wants staff to do this as part of their regular routine they can do that, but they have to have someone dedicated to just doing this.

Burk stated there has got to be some way to see those that are 80% over a normal usage.

Endicott stated the problem is not this big as it may sound. He does not think it is cost effective to pay someone \$25,000 a year to do nothing but look at excessive use of water.

Wells stated with the hourly reading list, all they would do is anything three times the average, they would kick out a repair list and they would work what they could. He does agree that they cannot look at all of them. Most residential customers are not going to use water every hour.

Endicott stated that he would have to have someone look at that list to determine if they used water every single hour because it reads it by the hour.

Wells stated he doubts there is any residential customer that has water usage every hour over a 24 hour period. If the computer just kicked out a list of those that had usage every hour, he would suspect that list would not be over 10 or 15 accounts. He stated that would probably indicate a leak.

Endicott stated he would then have to have someone sit down and evaluate the list, then they would have to call the people. He would be happy to have someone do this if the City Council would like to fund this.

Wells stated they could notify them on their next bill.

Endicott stated the citizen is responsible for their water and staff is going to do the best they can to help them identify the leak. He does not believe the problem is as great as it seems tonight. He stated they have also had several leaks because of the meter change out this year. They do contact the people when they can.

Shoemate stated he feels it would be a waste of time to put someone in there full time.

Mayor Purcell stated if someone gets a bill and it shows that they have used way more water than the previous month, don't they call and check on it?

Curren stated it is very possible that a lot of leak situations will involve two months of bills.

Drewry stated they are giving credit adjustments.

MOVED by Burk, SECOND by Drewry, to approve a credit adjustment in the amount of \$618.39 to Donna Littlefield. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Wells, Shoemate. NAY: None. ABSENT: Haywood. MOTION CARRIED.

11. Consider approving a credit adjustment in the amount of \$626.41 to Ralph Maassen's service account #00014336 for the property at 2002 NW Taft Avenue for an undetected, underground leak on the customer's water service line. Exhibits: Invoice from Robert's Repair Master Plumbing dated 08/13/09.

12. Consider approving contract Amendment No. 6 with CH2M Hill, Inc. for construction management services during construction of the WWTP Improvements Work Package No. 1 Project #2008-11. Exhibits: Amendment to the Agreement.

13. Consider accepting the Lake Ellsworth Dam/Spillway Repair Project #2008-14 as constructed by Chamberlin Dallas LTD and placing the Maintenance Bond into effect. Exhibits: None.

14. Consider awarding a construction contract to Red Cliff, Inc. for the 2008 CIP Waterline Replacement Phase 3 Project #2010-1. Exhibits: None.

Jerry Ihler, Public Works Director, stated staff is recommending the low bidder. He distributed a letter they received yesterday from the apparent low bidder. As a result they would like to change the recommendation of the award. He stated Red Cliff was the low bidder, but a day after the bid opening, Red Cliff did send a letter alleging that they had an error in their bid document. Staff met with them and from the bid document they received they did not see anything that would cause them to be non-responsive. If they did not want to do the project they would probably recommend that they obtain their bid bond or Red Cliff could go ahead and do the project at the amount submitted. He stated Red Cliff thought they could proceed and perform the project by subcontracting out to some local contractors, so staff submitted this agenda item for approval. He stated he received the letter yesterday that indicated that they do not want to do the project and they asked that we not take the bid bond. As a result of that letter, staff would like to change their recommendation and ask that the contract be awarded to the second lowest bidder, Luckinbill Inc. of Enid, OK. He stated they still intend to pursue the bid bond from Red Cliff.

Kristin Simpson, representing Red Cliff, stated this was a simple mathematical error. She appreciates that the City will award the contract to the second lowest bidder, but she would like to address the bid bond issue. She stated there is Oklahoma case law and Oklahoma statutory authority that in the type of error that has occurred here, the city can excuse the client's error and not cash the bid bond. She stated some of the things that courts consider in determining whether or not the bond should be returned is if the mistake is substantial, which it is in this case. She stated this is just a simple mistaken keystroke. She stated there is really no harm to the City in accepting the next contract and there is no reason in cashing the bid bond. She stated if the City does decide to pursue the bid bond, her client has authorized her to seek injunctive and declaratory relief in court.

Jensen stated he has met with Ihler and they are not ready to take what they are saying as an innocent error at face value and they have asked for clarification from the client. He stated this is not an automatic thing in where they get their bid bond back. He stated they can file a lawsuit whenever they want and staff will defend against it.

Mayor Purcell stated they will need a motion to award this to the second lowest bidder, Luckinbill in the amount of \$ 1,265,161.00. He stated there is no action taken tonight in regards to the bid bond.

Jensen stated the reason they need to get this awarded tonight is because this project is important and we will receive some stimulus money and the state wants us to proceed.

Burk stated that he would hate to beat up a good contractor if we don't have to. They may do a job for us in the future.

Jensen stated staff does not have enough clear information yet to make a recommendation.

Mitchell questioned if there was an offer to adjust Red Cliff's bid.

Ms. Simpson stated her client is not interested in doing that. She stated that might have been on the table at one point, but she does not have the authority to do that today.

MOVED by Burk, SECOND by Hanna, to award a construction contract to Luckinbill, Inc. in the amount of \$ 1,265,161.00 for the 2008 CIP Waterline Replacement Phase 3 Project #2010-1. AYE: Haywood, Wells, Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle. NAY: None. MOTION CARRIED.

15. Consider awarding a construction contract to Archer Western Contractors, LTD for the WWTP Improvements Work Package No. 1 Project #2008-11 in accordance with a Consent Order agreement between the Oklahoma Department of Environmental Quality (ODEQ) and the City of Lawton. Exhibits: None.

Wells stated he thought there was something that said that if the bid was 10% different from the engineers estimate, we did something differently.

Ihler stated they used to, but that has been removed. He stated with regards to the engineers estimate and his discussion with the consulting firm Black and Veitch, they felt that they failed to address the issue of a two year maintenance bond and they felt they did not take that into consideration and that was part of it.

MOVED by Wells, SECOND by Burk, to award a construction contract to Archer Western Contractors, LTD for the WWTP Improvements Work Package No. 1 Project #2008-11. AYE: Wells, Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood. NAY: None. MOTION CARRIED.

16. Consider acknowledging receipt of Tier I permits from the Oklahoma Department of Environmental Quality for the construction of 1,395 linear feet of 8-inch PVC waterline, 1,045 linear feet of 8-inch PVC sanitary sewer line, and all appurtenances to serve The Meadows located approximately mile south of NW Cache Road, west of NW 38th Street in the NE/4 of Section 27, T2N, R12W, Comanche County, Oklahoma. Exhibits: Permits to Construct on file in the City Clerk's Office.

17. Consider awarding (CL10-006) Dispatch Console/Radio Interface to Lawton Communications of Lawton, OK. Exhibits: Department recommendation, abstract of bids.

Wells stated the bid went out for radio control console for 100 radios. He stated Lawton Communications bid a package of 50 channels and ModUCom bid 100 channel. Since the supervisor only has 32 channels now and will not pass the 50 during the life of this equipment, he could go with Lawton Communications. He questioned if Derrell Morgan, the E-911 supervisor, was going to change his spec because Zetron didn't meet the bid specs. He stated he knows the cards for the radio channels cost \$1,900 a piece, so if you took 50 off, that would have lowered the ModUCom bid by about \$95,000 which would have made them the cheaper bid.

Chief Ronnie Smith, Lawton Police Department, stated he cannot answer that question and if the Council would like to table this item he can find out.

Wells stated he would recommend this be re-bid rather than tabled. If they are only going to go for 50 channel radios, then they need to bid it that way.

Mitchell suggested they table this item until the next meeting and let staff look at the specs.

MOVED by Wells, SECOND by Burk, to Table. AYE: Shoemate, Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

18. Consider awarding (CL10-018) Dispatch Console Workstation to Viking Acoustical Corporation. Exhibits: Department recommendation, abstract of bids.

19. Consider awarding (CL10-021) Sale of scrap water meters to Water Products of Oklahoma from Owasso, OK. Exhibits: Department recommendation, abstract of bids.

Endicott stated he asked that this be pulled because he did not feel that the initial agenda item provided the Council with enough information about what was going on. He distributed a memo to the Council. As a result of the water meter replacement program, they have an inventory of approximately 29,400 small meters and 883 large meters they would like to sell as salvage to a company with a bid of \$1.28 per pound. The approximate weight is 200,781 lbs. He stated they are requesting that all of the dollars, which they are estimating to be

\$256,999, be put back into the meter project so that they can buy some additional meters.

Burk questioned if we would be selling all of our meters or would there be any available to sell to the public. He stated \$1.28 a pound is not much.

Endicott stated Chevron originally told them we would only receive .50 a pound. He stated they would have to sell the upgraded units to the public so that they could read it with our system.

Burk stated he is talking about those that have private meters with a master meter.

Endicott stated he has been advised that they cannot sell them outright to individuals because it is city property and they would have to be sold through a sale or through an approval process with the Council. He stated he thinks they could withhold a certain amount of small meters.

Shoemate questioned if staff has contacted any of the rural water districts that use the same type of meters.

Endicott stated he has been contacted by one district.

Wells stated we might consider keeping some to sell for \$20-\$30 to some of these associations.

Burk stated he would like to see us help some of these local associations.

Barbara Curran, Revenue Services Supervisor, stated most of these meters are very old and their accuracy is not very good. She stated an association or the county would want the newer ones and there is no way they could go through these meters and pick out the newer ones.

MOVED by Burk, SECOND by Drewry, to awarding (CL10-021) Sale of scrap water meters to Water Products of Oklahoma from Owasso, OK and approve placing the funds from the sale back into the Meter project fund. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

20. Consider approving appointments to boards and commissions. Exhibits: None.

21. Consider approval of payroll for the period of November 2 15, 2009.

The Mayor and Council recessed at 8:07 p.m. and reconvened in regular open session at 8:18 p.m. Roll call reflected all members present.

NEW BUSINESS

22. Hold a public hearing and consider an ordinance closing a portion of a public utility easement on Lot 14, Block 1, Scissortail, Part 1, located at 1109 NE Scissortail Drive. Exhibits: Ordinance No. 09-__, Application, Site Plan and Location Map.

Richard Rogalski, Planning Director, stated this is another one of those items to vacate a little bit of the utility easement because a building was accidentally built on it. New Line Construction, Inc., the property owner of Lot 14, Block 1, Scissortail, Part 1, (1109 NE Scissortail Drive) has submitted an application to close a portion of the 7.5-foot public utility easement located along the east side yard of the lot. The house and patio, which are under construction, encroach into this easement a distance 3.2 feet at the widest point. The total is approximately 53 square feet of easement. On October 13, 2009, the City Council set the date of November 17, 2009 to hold a public hearing on this request.

Notice of public hearing was mailed to 3 property owners within 300 feet of the requested area and to private utility companies on October 16, 2009, and proper notice was published in *The Lawton Constitution* on November 3, 2009. PSO has advised that there are two underground cables in the 7.5-foot easement: a main 7.6 KV feed and a secondary street light feed. CenterPoint Energy advised they do not have any utilities in this easement. A response was not received from the other utilities. There are no public utilities in this easement.

Burk stated they could get title insurance where this could be approved without having to do this.

Rogalski stated the City of Lawton would have the right to demolish a portion of that house. That is the issue with title insurance. He has been told that when the actual house itself is in an easement, a revocable permit is not a resolution because it is revocable.

Wells questioned what would happen if PSO actually has to come in there and dig.

Rogalski stated it is a 15-foot easement and the encroachment is 3.2 feet into the easement so there is an

additional 11.8 feet.

Wells questioned if we vacated it, and someone gets electrocuted in the house, does the City have any responsibility?

Rogalski stated he cannot answer that.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

Wells questioned what was a public utility.

Rogalski stated water and sewer are public utilities. Electrical and gas are franchise utilities, so they have a right in a public utility easement, but they are not ours.

MOVED by Burk, SECOND by Drewry, to adopt **Ordinance 09-37**, waive the reading of the ordinance, read the title only. AYE: Drewry, Burk, Shanklin, Zarle, Haywood. NAY: Shoemate, Hanna, Wells. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 09-37

An ordinance closing a portion of a utility easement located on lot 14, block 1, Scissortail, Part 1, addressed as 1109 NE Scissortail Drive, more particularly described in section one of the ordinance.

23. Consider amending an ordinance relating to recreation, Section 19-5-508, Article 19-5, Chapter 19, Lawton City Code, 2005, pertaining to adding regulation to establish procedure for structural improvement and maintenance of space adjacent to dock units at Lakes Lawtonka and Ellsworth, providing for severability and declaring an emergency. Exhibits: Ordinance 09 - ____.

Kim Shahan, Parks and Recreation Director, he stated there is no language in the ordinance associated to improvements that have been made over the years on the property adjacent to boathouses. He stated they have placed a list of items that have been approved for construction. Someone can submit a request to staff prior to building. He stated there was no language on how they can get these things accomplished and what the procedure was. He stated that staff and members of the Lake and Lands Commission are recommending approval.

Shanklin stated he does not know what we are trying to do.

Shahan stated over the years there have been items constructed that are on the land that is adjacent to the boathouse. There was no language in the ordinance giving permission to those boathouse operators. He stated this will give him something to follow in terms of what is approved or what is not approved.

Shoemate questioned what will happen to those that have already placed storage sheds, etc.

Shahan stated they have looked at the approvals that are already out there and most of those are listed in here and will be approved.

Burk questioned if there is anything that is already there that will not be approved.

Shahan stated there are some large storage buildings that are out there that they feel should not be. He stated none of these are authorized and they have the authorization to remove everything at the expense of the owner.

Mayor Purcell stated the citizens pay so much per year for the right to have that boathouse over the water. He questioned if a boathouse owner can sell his boathouse and we don't even know about it until they come in and pay the lease. He questioned if this is how it works.

Shahan stated they go to the courthouse when they purchase the boathouse and that is when they bring it to staff.

Mayor Purcell stated this would leave out all of those citizens who have been waiting in line for a space.

Shahan stated the lessee has control over that situation.

Wells stated that if someone dies, do his heirs lose a \$30,000 - \$40,000 boathouse because no one is going to pay that amount of money for it or do they have some right to try and recoup the investment. He stated they need to look at that.

Mayor Purcell stated if someone came in and built a new one in that spot, the City would not be involved other than the new owner comes in and pays the lease.

Wells stated he does not think people would put out nice boathouses if they had no way to recoup their investment.

Mayor Purcell stated now they are fixing this part where they can build a patio and whatever else they want on the land. He stated we just keep going.

Burk questioned is there were any fees associated with this, or are we just approving what they can use.

Shahan stated we are establishing what can be there and the process for them to be able to do that. He stated the Lakes Commission suggested that staff bring back a fee structure for the usage of the property. He stated they were only attempting tonight to address structural improvements and what is approved and not approved.

Drewry stated the Commission spent a lot of time on this issue.

Burk stated there should be some revenue source since not every citizen gets the right to use that land. He stated there should be fees associated with using the actual land associated with that boathouse.

Jensen stated he is concerned that some of the boathouse owners will make the legal argument that we are trying to do this retroactively. His preference would be to do all of this together.

Drewry stated she believes the boathouse owners would not object to paying for the extra space.

Wells requested the City Manager come back with a fee schedule for the usage.

Burk stated he is concerned that they are putting the cart before the horse. He believes they make get in trouble if they don't approve the fee schedule first. He agrees these should be done together.

Drewry stated this was written to try and cover what is already there.

Mayor Purcell questioned if staff could get the fee schedule to the Council by December 15th. If they drop the emergency clause, the ordinance would not go into effect until December 17th.

Wells questioned why the emergency clause would matter because they are going to grandfather everything in.

Shahan stated they are not grandfathering anything, they are just listing items that are approved.

Hanna questioned what is going to happen when these people refuse to pay.

Jensen stated they were never authorized to be there so we could direct them to move it.

Shoemate suggested they grandfather everyone that is currently out there and when they leave, we could charge the fee. The people have spent a lot of money fixing these places up.

Burk stated he would like to look at each of these before they make someone tear it down.

Drewry stated the boathouse owners have spent their money out there and have made improvements and now that it is nice, we want to become involved.

Hanna stated they are taking space away from the public.

Drewry stated there are all kinds of public space at the lakes.

MOVED by Drewry, SECOND by Haywood, to adopt **Ordinance 09-38**, waive the reading of the ordinance, read the title only with no emergency clause. AYE: Drewry, Burk, Shanklin, Haywood. NAY: Hanna, Zarle, Shoemate. ABSTAIN: Wells. MOTION FAILED.

Mayor Purcell questioned why everyone voted no. He questioned what they wanted.

Shoemate stated he voted no because he felt they need to grandfather some of these people that have invested a lot of money. When they pass away and the next person comes along, then you change it.

Jensen stated most of these people will be grandfathered in because their improvements will be on the approved list.

Mayor Purcell stated if this ordinance is not passed, then staff has the right to go and tell everyone to remove everything.

Wells stated he specifically asked if they would be grandfathered and he specifically said no.

Jensen stated the improvements on the list will be grandfathered in, but there are some things that are not on the list, like those big storage sheds, that will not.

MOVED by Zarle, SECOND by Drewry, to reconsider item 23. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

Wells stated he would make the motion with the statement that what is there will be grandfathered and the fees will be charged when it changes ownership.

Mayor Purcell stated they would then have to rewrite the ordinance. You either pass the ordinance as written or staff will have to rewrite the ordinance and bring it back.

Wells questioned if they could pass the ordinance with the understand that the City Manager will bring back a fee schedule that will grandfather those things in that are there now.

Jensen questioned if he is even talking about the large sheds.

Wells stated no, but whatever staff is recommending.

Jensen stated that is already covered on the approved list. All of these items will be grandfathered in, but there are big storage sheds that will not.

Wells stated if they are going to be grandfathered in he does not have a problem with the ordinance.

Burk stated it becomes a permissible use so they would not need to grandfather anything in.

Mayor Purcell stated if they pass this ordinance exactly as it reads now it says that anyone that has made an improvement that is already there, has a right to keep it there as long as it fits into the requirements. If you want those improvements to stay, you have to pay some fee to use that land. If there are not any improvements out there today, you will have to pay some fee to use some land and build an improvement, if you want. He questioned if this is what this says.

Shahan stated yes.

Mayor Purcell stated that the Council wants staff to come back with a fee schedule that fits in here. He stated Councilmember Wells does not want anyone to have to pay anything if they have already put the improvement out there. They get by free to use that land. Anyone new that wants to use that land will have to pay a fee.

Councilmember Burk feels that if you are there now with an improvement or you come later on with an improvement, you have to pay the fee. That is the argument.

Wells questioned if people were allowed to put up a fence on the bank of the boathouses.

Shahan stated they are recommending an aesthetic type of fencing that would be more of a safety railing, it is not intended to be a fence that would control a piece of land. Those items are listed.

MOVED by Zarle, SECOND by Drewry, to adopt **Ordinance 09-38**, waive the reading of the ordinance, read the title only. AYE: Shanklin, Zarle, Haywood, Wells, Shoemate, Drewry. NAY: Burk, Hanna. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 09-38

An ordinance pertaining to space and dock units at the lakes amending Section 19-5-508, Article 19-5, Chapter 19, Lawton City Code, 2005, pertaining to adding regulation to establish procedures for structural improvement and maintenance of spaces adjacent to dock units at lakes Lawtonka and Ellsworth, providing for severability.

24. Discuss Lawton City Ordinance 22-2-2, Water Service Impact Fee and Extension Service pertaining to commercial businesses within Lawton City limits and the requirement thereof. Exhibits: Minutes from 4/26/05, Water and Sewer Capacity Fees, Exhibits and Impact Fee Schedule.

Wells stated he was not on the City Council when this was established and he had a citizen ask him about the impact fees he looked at it. He spoke with two council members and he got to sides, one was saying it did not affect the current citizens and the other said it affected anyone who had a meter change. He understood the impact fees were for redevelopment or major development in the city. He has found that we now also charge our existing customers. If a citizen decides to put in a sprinkler system in their yard and it requires going from a 5/8 to a 1 inch meter, they would have to pay some kind of an impact fee. He is not sure they should be doing that to

our citizens. He suggested they look at the ordinance and consider changing it back where they are not charging the citizens for something they have been paying for years. If a citizens is changing the meter size for an existing business he does not believe we should be charging them an impact fee. They should pay for the meter, but not for the impact fee.

He stated also that seven wards are being discriminated against because they added the area from Ferris to Lee and from Railroad to 17th that is exempt and that is where development is going to be for the next several years. He would like to take that area out of the ordinance.

Zarle questioned if the majority of this is for new development.

Mitchell stated the basic premise behind the ordinance was to develop a fee system that answered the question of who had the liability of paying for improvements to our system. He stated those that are requesting the additional volume of water and those that may have some impact on our system should help pay for that improvement versus the citizen at large. He stated they developed the ordinance around the idea that if you are impacting the system, you are increasing the demand on the system that may require at some time in the future, to replace an eight inch line with a ten inch line, and you should be contributing to the cost of that improvement, no everyone else in the community.

Mayor Purcell stated this issue came up because a person owns a business and they have a two inch meter now and he wanted to increase it to a four inch meter. That four inch meter was going to cost his \$40,000. He stated he is going to draw that much more water off those lines and if he is going to draw water off a four inch line that could cut down on the amount of water you could be using for firefighting somewhere else. He stated he believed they solved this problem for this individual by going to two two inch meters. He stated he did not know they had this for new business, he knew they had the impact fee waiver because they were trying to encourage people to redevelop downtown because we already had the infrastructure in place. He questioned if they needed to put a committee together to look at this.

Wells stated that same person has called him back and he did not agree with this proposed settlement. He stated it was not so much that he needed more water, but the new machines needed better water pressure. He is not remodeling the business and it seems like a lot of money to charge an existing business.

Mitchell stated the solution staff recommended would have reduced his cost to around \$7,000.

Shanklin questioned if they looked at any other cities that had this program.

Mitchell stated they looked at three or four other cities that use impact fees. Most of those cities are structured very similar to our and some of those cities had a much higher impact fee. The Council decided to phase in the impact fee over a three year period so it was a graduated increase in the rates.

Wells suggested they put together a committee to look at the ordinance.

Mitchell stated they need to be very careful about how they define existing commercial business and what the definition of that might be and the parameters are because they could get into a situation where they are impacting the system.

Wells stated they really need to look at the area they have exempted. If there is a lot of building in that area it could affect those plants. He does not feel this is fair to the other wards.

Mayor Purcell stated there was a big study group that looked at this and there were a lot of developers who did not want this and they will be opening up that issue.

Wells stated he does not feel that charging existing customers is fair.

Mayor Purcell stated he can appoint a Mayor s committee and that way they won t have to worry about minutes, quorums, etc. He questioned who on the Council would like to serve on that committee.

Ihler stated there is already an Impact Fee Oversight Committee in place and it does include two councilmembers. He stated the committee is made up of one member from the Lawton Homebuilders Association, one member from the Chamber, one member actively participating in land development, one member from a financial institution, two councilmembers and staff. The two councilmember originally appointed are longer on the council.

Wells stated he would like to be on the committee.

Drewry stated she would like to be on the committee. She also was under the impression that impact fees were for new construction.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Mayor Purcell stated they need to strike item #27 under executive session.

Hanna stated several people have told him that he should not have voted for the school bond election because of a conflict of interest. He has also been accused of violating the Open Meetings Act when he speaks to other councilmembers.

Jensen stated before the vote on Central Junior High a determination was made that there was absolutely no conflict of interest to prevent Councilmembers Hanna or Haywood from voting then or from voting on the most recent sales tax election. On the issue of violating the open meeting act, if there are two or three councilmember get together, they are going to talk about itmes of business for the City, there is nothing in the Open Meeting Act that says they cannot have conversations about topics of interest to them as councilmembers. They cannot make a commitment during these conversations that they will vote one way or another. He stated everyone has conversations outside of council meetings that are coming up on the agenda or have already come up on the agenda. He stated they cannot make commitment on how they will vote before an item comes before the City Council in open session.

Burk requested an update on the work being done at McMahon Park on 38th Street.

Mayor Purcell read Section C-2-5 of the City Charter which stated that except for the purposes of inquiry, the Mayor, Council and its members shall deal with the administrative service soley through the City Manager and neither the Mayor, Council or any member thereof may give orders on administrative matters to any subordinate of the City Manager either publicly or privately. He stated they should not be talking to those below department heads, telling them what to do.

Mitchell stated there will be a reception and open house at Old Lawton High on December 11th at 10:30 a.m.

The Mayor and Council convened in executive session at 9:25 p.m. and reconvened in regular, open session at 9:59 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

25. Pursuant to Sections 307B.3, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the purchase of permanent easements which are necessary for the South Wolf Creek Trunk Expansion One Project # 07-2SSES and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 25.

MOVED by Hanna, SECOND by Drewry, to approve the payment in the amount of \$52,560 to Larry and Linda Binkey for tract 6 & 7 for easement needs for construction of the South Wolf Creek Sewer Expansion Project and authorize the Mayor and City Clerk to execute the easement documents. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

26. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2009-2010 between the American Federation of State, County and Municipal Employees (AFSCME), Local 3894, and the City of Lawton, and take appropriate action in open session. Exhibits: None.

Jensen read the title of item 26. No action is needed.

27. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of the case before the District Court of Comanche County, titled City of Lawton v. AFSCME Local 3894 and PERB, CJ-2009-680, and take appropriate action in open session. Exhibits: None.

THIS ITEM WAS STRICKEN FROM THE AGENDA.

ADDENDUM:

EXECUTIVE SESSION ITEM:

1. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of the case before the Federal District Court for Western District of Oklahoma, titled Shelli Fox v. City of Lawton, and take appropriate action in open session. Exhibits: None.

Jensen read the title of item 1. No action is needed.

2. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the authority to file an action to abate a nuisance, to include recovery of costs, and seek an injunction against Yes Companies, L.L.C., d/b/a Sherwood Village Mobile Home Community, and if necessary in open session, ratify the actions taken heretofore by City employees and take other appropriate action. Exhibits: None.

Jensen read the title of item 2.

MOVED by Burk, SECOND by Shoemate, to authorize the City Attorney to file suite against Yes Companies, L.L.C., for the purpose of 1) compelling Yes Companies to abate the continuing public nuisance involving the ongoing accumulation of raw sewage at the Sherwood Village Mobile Home Community located at 601 NE Flower Mound Road and 2) ordering Yes Companies to reimburse the City for any cost the City may incur should the City have to abate the nuisance. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 10:02 p.m. upon motion, second and roll call vote.

/s/ John P. Purcell
JOHN P. PURCELL, JR., MAYOR
ATTEST:

/s/ Traci L. Hushbeck
TRACI HUSHBECK, CITY CLERK